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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1936

No. 406

WILHELMINA SUMI,
Petitioner,

vs.

ALSIE M. YOUNG,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit,
and
BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals for the Ninth Circuit.

To the Honorable Charles Evans Hughes, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

The Petition of Wilhelmina Sumi for a Writ of Certiorari, directed to the United States Circuit Court of Appeals for the Ninth Circuit, respectfully shows to this Honorable Court:

A.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

Mayme Helen Young, a resident of Fairbanks, Alaska, died there testate (her husband having predeceased her) leaving her surviving two minor children by a former marriage, George Huston Cook (9) and Ruth Marion Cook (8). (R. 2.) By her Will she nominated and appointed Respondent, Alsie M. Young (brother of her deceased husband but a stranger to the minor children), as Guardian of the children. (R. 3.)

Respondent, a resident of Michigan, petitioned the Probate Court*, Fairbanks Precinct, Alaska, that his Bond be fixed and Letters of Guardianship issue to him. (R. 1.)

Wilhelmina Sumi, Petitioner herein, a resident of Fairbanks, maternal grandmother of the minors, filed in the Probate Court a "Protest and Petition" (R. 7 and 16) setting forth her objections to the confirmation of the testamentary appointment of Respondent, and petitioning for her own appointment as their Guardian. This the Probate Court denied (R. 21), and appointed Respondent as Guardian of the persons of the minors. (R. 25.) Petitioner appealed to the District Court, Fourth Division of Alaska. (R. 26.) In accordance with the Statute (Sections 4573 and 4574, Compiled Laws of Alaska 1933) a trial *de novo* was had. (R. 36 and 37.) The District Court

*In Alaska, United States Commissioners are ex-officio probate judges. Act of June 6, 1900, c. 786, Section 6, 31 Stat. 323, 48 U. S. C. A. Section 108; Compiled Laws of Alaska 1933, Section 1109.

sustained the Probate Court (R. 37) and Petitioner appealed from its judgment to the Circuit Court of Appeals for the Ninth Circuit. (R. 55 and 60.)

In the Circuit Court of Appeals, Respondent filed a "Motion to Dismiss the Appeal" (R. 127) on the ground that the Court did not have jurisdiction to hear it, contending that jurisdiction is conferred on the Circuit Court of Appeals only in specified cases as set forth in Section 128 of the Judicial Code, as amended by Section 1 of the Act of February 13, 1925, c. 229, 43 Stat. 936, 28 U. S. C. A. Section 225, and that this is not one of those cases. To this Motion, Petitioner filed her opposition upon the ground that the Circuit Court of Appeals has jurisdiction not only by Section 128 of the Judicial Code, but specifically has it under Section 943 of the Act of June 6, 1900, c. 786, 31 Stat. 480, being the Compiled Laws of Alaska 1933 (Code of Civil Procedure), Section 4574. (See Opinion of Court, R. 131.) The Court granted the Motion to Dismiss the Appeal (R. 133), thereby making the District Court of Alaska, the Court of last resort. If there is no appeal from the District Court in a case of this character, a question is presented of vital importance to all of the people of Alaska.

B.

REASONS FOR GRANTING THE WRIT.

(a) The Circuit Court of Appeals has decided an important question of Federal law which has not been, but should be, settled by this Court, namely: Does Section 128 of the Judicial Code, as amended, exclusively confer appellate jurisdiction on the Circuit Court of Appeals in cases decided by the District Court of Alaska, or does not Section 4574 (Code of Civil Procedure), Compiled Laws of Alaska 1933, Section 943 of the Act of June 6, 1900, c. 786, 31 Stat. 480, which is also an Act of Congress, and which has not been repealed, supplement that jurisdiction and confer appellate jurisdiction by its own terms.

(b) That the Circuit Court of Appeals has decided an important question of local law in a way probably in conflict with applicable local decisions, for the reason that in an early case decided by Judge Wickersham sitting in the District Court of Alaska (*In re McCarty's Estate,* 3 Alaska 242-248) he stated that an appeal did lie to the Circuit Court of Appeals under Section 943 (supra).

WHEREFORE, your petitioner prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding said Court to certify and to mail to this Court, for its review and determination, on a day certain to be named therein, a full and complete Transcript of all the proceedings in this case, numbered

on the docket of said Court No. 7992; that judgment therein may be reversed by this Honorable Court; and that your Petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

Dated, San Francisco, California,
September 23, 1936.

HERMAN WEINBERGER,
Attorney for Petitioner.

LOUIS K. PRATT,
of Counsel for Petitioner.